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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,858

10/20/2005

Doris Reich

3456

1047

278

7590

01/04/2008

MICHAEL J. STRIKER
103 EAST NECK ROAD
HUNTINGTON, NY 11743

EXAMINER

RACHUBA, MAURINA T

ART UNIT

PAPER NUMBER

3723

MAIL DATE

DELIVERY MODE

01/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/553,858	Applicant(s) REICH ET AL.	
	Examiner Maurina Rachuba	Art Unit 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 7-10 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. As the amendment filed 20 October 2005, simultaneously with the filing of the application, was not entered in the electronic file before the first action on the merits, this action is made non-final to allow applicant fair opportunity to present the amendment for examination. Applicant provided a copy of the stamped postcard showing that the amendment had been received by the Office, and it has been entered in the file.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4, 7, 8, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim, 2005/0050677 in view of Lenkiewicz et al, 2005/0050672. '677 discloses a dust collection container for a hand held power tool, the container including a container wall that encloses a dust collection volume and a dust intake opening provided in the wall for connection to a discharge adapter of the tool, a viewing window in the wall, the wall has two end faces, a dust intake opening, and a longitudinal side, in which the window is located. '677 does not disclose that the intake opening is located on an end face, that there are two longitudinal sides, or that there are two filling marks located at a right angle to each other and provided in the viewing window, the viewing

window being right angled and the filling marks formed by two lines extending in parallel to one window edge each; the container wall made of a transparent material with a milky-opaque surface, or the side wall being transparent. In a container used with a hand held power tool, '672 teaches including an opening in an end face. As both references teach containers for hand held power tools, it would have been obvious to one of ordinary skill in the art to have provided '677 with an opening in an end face of the container, for the predictable results of providing a direct flow into or out of the container, preventing clogging. Further, '672 teaches a container having two longitudinal sides. It would have been obvious to change the shape of '677 to provide two longitudinal sides, as a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Here, as both references teach providing a window in a longitudinal side of a container, there is no criticality to providing two such sides, for example in a rectangular container, as opposed to a cylindrical container. Further '672 teaches a right angled viewing window, and two filling marks located at a right angle to each other and provided in the viewing window so that the lines extend parallel to one window edge each. As both references teach containers for use with hand held tools, it would have been obvious to one of ordinary skill to have provided '677 with the fill marks taught by '672, for the predictable results of preventing overfilling of the container. Further, '677 teaches placing the window next to the intake opening. Regarding the transparency of the container, it would have been obvious to one of ordinary skill in the art to have formed the container of '677 from a transparent material

or from an opaque material with a transparent window, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Here, as '677 discloses a transparent window inset into a wall of a container used with a hand held tool, there is no criticality to making the container of either a transparent or opaque material, other than for aesthetic reasons.

Response to Arguments

4. Applicant's arguments filed 22 October 2007 have been fully considered but they are not persuasive. Applicant's amendment has overcome the previous rejections. Applicant argues that Lenkiewicz is nonanalogous, in that it teaches a liquid supply tank and not a dust collecting box for a vacuum system. The examiner disagrees. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Lenkiewicz can be broadly interpreted as a container for use with a hand held tool, and is also reasonably pertinent to the particular problem with which the applicant was concerned, that of using a visual indicator to tell when the container contents reach a certain level when the container is in either horizontal or vertical position. The claims are considered obvious because the design incentives or market forces provided a reason to make the adaptation, and the invention resulted from application of the prior knowledge in a predictable manner. Here, one of ordinary skill would expect predictable

results in applying the teachings of Lenkiewicz to Kim, as set forth in the rejections above.

5. As per the interview summary of 02 August 2007, this action is made non-final.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maurina Rachuba whose telephone number is 571 272 4493. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571 272 4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Rachuba/
Primary Examiner, Art Unit 3723